

Sentencing Guideline Downward Departures

What Does the Data Show?

- Data concerning the reasons for downward departures (sentences lower than those specified in the Sentencing Guidelines) is imprecise, because existing systems were not built to capture this information.
- Defendants plead guilty in 97 percent of all sentenced cases. Many guilty pleas are pursuant to some sort of agreement with the government.
- Downward departures are caused primarily by prosecutors who initiate downward departures through substantial assistance motions, plea agreements, and so-called “fast-track” programs in the southwest border districts—Arizona, New Mexico, California-Southern, Texas-Southern, and Texas-Western.
- Substantial assistance motions are agreements made by prosecutors to ask the court to reduce defendants’ sentences when they provide information about criminal activity that leads to the prosecution of others.
- *The five border districts alone account for close to 60 percent of all other downward departures nationwide.* Fast-track programs were established by United States attorneys offices to respond to increased law enforcement efforts to stop the flow of drugs and illegal immigrants that brought thousands of new cases into federal courts, and in particular, the border courts. In these programs, the government agrees to additional downward departures not authorized by the Sentencing Commission to expedite the cases.
- The exact number of downward departures initiated solely by judges is unknown, but when government-initiated downward departures are considered, the rate of downward departures has remained around 10 percent—a very small proportion of all downward departures.
- In FY 2001, the government appealed fewer than one half of one percent of downward departures.
- At its September 2003 session, the Judicial Conference approved a new judgement form that will capture more detailed sentencing data.